



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 30, 1996

Mr. Keith P. Ellison  
Attorney at Law  
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Houston, Texas 77002-5281

Mr. Ross J. Radcliffe  
Johnson, Radcliffe & Petrov, L.L.P.  
Paragon Center One  
450 Gears Road, Suite 700  
Houston, Texas 77067

OR96-1575

Dear Sirs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 100374.

Each of the following utility districts received an open records request from the same requestor: Harris County Utility Districts Nos. 1, 2, 3, 4, 5, 8, and 10 and Harris County Municipal Utility Districts Nos. 46, 93, 109, 132, 145, 151, 153, 236, 262, 350, and 356 (the "districts").<sup>1</sup> The requestor is seeking 15 categories of information from each of the districts. The districts are in the process of responding to the requests; however, you believe that some of the information responsive to the requests is excepted from required public disclosure. Specifically, Mr. Ellison contends that the information responsive to categories 11, 12, and 13 of the requests is excepted from disclosure under sections 552.103, 552.107, 552.111 of the Government Code. Mr. Radcliffe contends that the some of the information responsive to category 7 of the request and all of the information responsive to categories 11, 12, and 13 of the request is excepted from

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<sup>1</sup>Mr. Ellison represents Harris County Municipal Utility Districts Nos. 46, 109, 132, 151, and 153. Mr. Radcliffe represents Harris County Utility Districts Nos. 1, 2, 3, 4, 5, 8, and 10 and Harris County Municipal Utility Districts Nos. 93, 145, 236, 262, 350, and 356.

disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.<sup>2</sup> Categories 7, 11, 12, and 13 read as follows:

(7) All attorney billings and related detail for the last 24 months.

...

(11) All documents, letters, notes or other items relating to efforts of the district or others to challenge, protest, analyze or otherwise affect or influence the annexation of land, including the district, by any municipality.

(12) All documents that concern, relate to, describe, analyze or refer to the annexation or possible annexation, or prohibition of annexation, by the City of Houston of properties not now within the City of Houston.

(13) All documents that consider, analyze, discuss or refer to whether the City of Houston is eligible to participate in the formation of a "strategic partnership agreement" within the meaning of Texas Local Government Code § 43.0751.

Mr. Ellison has submitted to this office for review the information that he seeks to withhold from disclosure. Mr. Radcliffe has submitted to this office for review representative samples of the information that he seeks to withhold from disclosure.<sup>3</sup> We assume that you have released all of the other responsive information to the requestor.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is

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<sup>2</sup>Although Mr. Radcliffe initially claimed that some of the information at issue is excepted from disclosure under section 552.109, he offered no arguments to support that claim and apparently no longer wishes to invoke section 552.109. Thus, we do not address his section 552.109 claim.

<sup>3</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have demonstrated that the districts anticipate litigation concerning annexation of the districts. The information for which you claim section 552.103 is related to the issue of annexation. Thus, the districts may withhold the information pursuant to section 552.103 of the Government Code.<sup>4</sup> Because we find that the districts may withhold the information under section 552.103, we need not address their claims that the information is excepted from disclosure under sections 552.101, 552.107, and 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 100374

Enclosures: Submitted documents

cc: Ms. Helen M. Gros  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562  
(w/o enclosures)

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<sup>4</sup>We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982). Of course, the districts have the discretion to release the information at issue here. See Gov't Code § 552.007.